VEHITO RENTAL PTE. LTD.

v.

KARUPPIAH RAVINDRAN

HIGH COURT, SINGAPORE
LAI KEW CHAI J
[M.C. SUIT NO. 11258 OF 1987]
13 MARCH 1989

CONTRACT: *Vehicle hired under rental agreement seriously damaged - Whether defendant in breach of agreement in allowing "unauthorised driver" to drive - Construction of clauses in the rental agreement.*

CIVIL PROCEDURE: *Appeal from decision of deputy registrar refusing plaintiffs' application for summary judgment - Whether questions of fact in issue could be tried on affidavits.*

The plaintiffs, a car rental company, hired out a car to the defendant under a "vehicle rental agreement". Three days later the car was towed back and redelivered to the plaintiffs after it was seriously damaged in a traffic collision with another vehicle and was a total wreck. At the time of the collision the car was driven by one Theinmoli V. Suppiah who was not an "unauthorised driver" within the meaning of that expression in the agreement. The plaintiffs commenced proceedings in the Subordinate Courts against the defendant for recovery of the loss of the car less its wreck value in the sum of $9,300, loss of hire at $37 per day, interest and costs. They applied for summary judgment on the ground that the defendant was in breach of the agreement in allowing an unauthorised driver to drive the car at the time of its loss and was therefore liable for damages in the liquidated sum for breach of the contract. The deputy registrar refused the plaintiffs' application and they appealed.

The defendant contended that the plaintiffs were precluded from asserting that Theinmoli V. Suppiah was an "unauthorised driver" and alleged that he had with the knowledge and consent of the plaintiffs used his "special privilege card" in order to hire the car for and/or on behalf of Theinmoli V. Suppiah. He particularised this allegation by alleging that he dealt with a Malay employee of the plaintiffs, who he knew by the name "Harris", to whom he had made payment and who know about these facts. The defendant submitted that the knowledge of this employee was the knowledge of the plaintiffs. The sales manager of the plaintiffs denied this and claimed that he was the person who had received the hire payment from the defendant.

The plaintiffs at the hearing of further arguments raised a new argument founded on Clause 12 of the agreement which stated that after the period of hire the defendant was to return the vehicle in as good order and condition as when the vehicle was collected from the plaintiffs. The question that arose was whether the defendant by the terms of Clause 12 had undertaken to return the car in as good a condition as when taken by him, whatever the circumstances or had agreed to be an insurer of the car for the benefit of the plaintiffs.

Held:

[1] On the evidence put in on behalf of the defendant there arose the question whether the plaintiffs were estopped from alleging that Theinmoli V. Suppiah was an unauthorised "driver". This question could not be decided on the affidavit evidence and therefore had to be tried.

[2] The Court is not persuaded by the construction of Clause 12 canvassed by Counsel for the plaintiffs. If, this was wrong, however, the whole issue should be looked at and determined only at the end of a trial in which the factual matrix or background of the hire and the conclusion of the hire agreement including the age and condition of the car, *inter alia*, could be examined and findings of fact would be made.

[Appeal dismissed with costs.]

Cases referred to:
Vendair (London) Ltd. v. Giro Aviation Company Ltd. [1961] 1 Lloyd's Rep 283
A.R. Williams Machinery Co. Ltd. v. Muttart Builders Supply (Winnipeg) Ltd. 30 DLR (2d) 339

Legislation referred to:
Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) [Sing], s. 3

Other sources referred to:
Halsbury's Laws of England, Vol. 2, 4th Edn., p. 725 para. 1558

For the appellants/plaintiffs - W.T. Woon
For the respondent/defendant - Ravindra Samuel

JUDGMENT

Lai Kew Chai J:

The plaintiffs, a car rental company, hired out a car to the defendant under a "vehicle rental agreement" entered into on 8 April 1987. At noon three days later the car was towed back and redelivered to the plaintiffs after it was seriously damaged in a traffic collision with another vehicle. It was said to be a total wreck, though it had some wreck value. At the time of the collision the car was driven by one Theinmoli V. Suppiah who was not an "authorised driver" within the meaning of that expression in the agreement. The plaintiffs commenced proceedings in the Subordinate Courts against the defendant for recovery of the loss of the car less its wreck value in the sum of $9,300, loss of hire at $37 per day from 11 April 1987 until payment of the loss of the car, interest and costs. They applied for summary judgment on the ground that the defendant was in breach of the agreement in allowing an unauthorised driver to drive the car at the time of its loss and was therefore liable for damages in the liquidated sum for breach of contract. The deputy registrar refused the Plaintiffs' application. They appealed. At the conclusion of the appeal and not withstanding further arguments which I heard this week at the request of Counsel for the Plaintiffs, I remained of the view that the appeal must be dismissed with cost.

That Theinmoli V. Suppiah was not an "authorised driver" within the meaning of the agreement was not in dispute, but the defendant referred to certain circumstances and contended that the plaintiffs were precluded from asserting that Theinmoli V. Suppiah was an "unauthorised driver." The defendant alleged that he had with the knowledge and consent of the plaintiffs used his "special privilege card" in order to hire the car for and/or on behalf of Theinmoli V. Suppiah. He particularised this allegation by alleging that he dealt with a Malay employee of the plaintiffs who he knew by the name "Harris" to whom he had made payment and who knew about these facts. The defendant submitted that the knowledge of this employee was the knowledge of the plaintiffs. The sales manager of the plaintiffs denied this and claimed that he was the person who had received the hire payment from the defendant. Obviously the deputy registrar could not be expected to try this question of fact on affidavits and neither could I do so.

The other issue raised on behalf of the defendant before the deputy registrar was whether the third party liability policy did not, as it was stated, extend to cover use of the car by hire. Counsel for the defendant at the hearing before the deputy registrar referred to the following express provisions in the policy.

The relevant parts reads:

> Limitations as to Use:
>
> ...
>
> Use for the carriage of passengers (other than for hire or reward) in connection with the insured's business.
>
> ...
>
> The Policy does not cover (i) Use for hire or reward of for racing pace-making reliability trial or speed-testing.

The defendant alleged that the plaintiffs had hired out the car without a valid third party liability policy as required by s. 3 of the Motor Vehicles (Third Party Risks and Compensation) Act Chapter 189. If so, the defendant contended that the agreement was illegal and unenforceable as it would be contrary to public policy. The plaintiffs were unable to refer to any contrary evidence before the deputy registrar who on this ground alone ordered that the defendant be given unconditional leave to defend.

In the appeal before me, plaintiffs' Counsel submitted that Theinmoli V. Suppiah had in her police report stated that the defendant had granted her permission to drive the car. It was suggested that it was significant that she did not make any reference as to the circumstances of the hire effected on her behalf. I rejected this submission as it added nothing at all to the case of the plaintiffs. In the context of a police report, in which she was to refer to material matters relating to the accident, she could not reasonably be expected to refer to the arrangements made by the defendant on her behalf to hire the car. That was a matter personal to the two parties. As for the illegality point, Counsel for the plaintiffs submitted that there was clear evidence that the provisions in the policy under the phrase "Limitations to Use" were not deleted or cancelled by pure administrative error. Be that as it may, I was of the view that on the evidence put in on behalf of the defendant there arose the question whether the plaintiffs were estopped from alleging that Theinmoli V. Suppiah was an "unauthorised driver". I could not decide that question on the affidavit evidence. Therefore it had to be tried. I accordingly dismissed the appeal with costs.

After the hearing of the appeal and before the order was perfected, the plaintiffs' solicitors wrote in and applied for further arguments to be heard. The application was based on a new argument founded on the scope of Clause 12 of the agreement which reads: "On or prior to the expiration of the period of hire the (defendant) shall return the vehicle to the (plaintiffs) in as good order and condition as the vehicle was when collected by the (defendant) from the (plaintiffs)." (The words in brackets are substituted by me.) I agreed to hear further arguments. This argument required a proper construction of the scope of Clause 12. The purpose of looking at Clause 12 was to elicit the true intention of the parties to the agreement and that could be achieved by considering the provisions of the agreement as a whole in the light of the factual matrix. Clause 12 on its own was to my mind clear enough: the defendant had agreed to return the car "in as good a condition as the vehicle was when collected" by the defendant. In most other contracts, a bailee or hirer such as the defendant may contract in terms either to limit or enlarge his liability at common law for loss or damage of the chattel.

In *Halsbury's Laws of England*, Vol. 2, 4th Edn., p. 725, para. 1558, it is stated:

> The hirer is, as a general rule, under an obligation to take reasonable care only of the chattel hired, and is not liable for loss or injury happening to it, unless caused by his negligence, or that of his servants. His liability may be extended or diminished by the terms of a special contract, which will be construed with reference to the age and condition of the particular chattel at the time of the hiring and the circumstances of the injury.

But Clause 12 did not stand alone. It had to be read with Clause 7 of the agreement. The question so far as this part of the case was concerned was whether the defendant by the terms of Clause 12 had undertaken to return the car in as good a condition as when taken by him, whatever the circumstances. Did he, in other words, agree to be an insurer of the car for the benefit of the plaintiffs? The operative and opening words of the agreement in its original blank form read as follows:

> I/We ... Office Tel No. ... (Business Reg. No. ... I/C or PP No. ...) of ... Home Tel No. ... hereby confirm having agreed to hire this day from Messrs. Vehito Rental Pte. Ltd. 594, Upper Thomson Road, Singapore 2057 the owner of the undermentioned vehicle at the rental fees as shown below and I further agree that I shall be held responsible for the first $1000 of any damage caused to the Vehicle or of any loss resulting from theft or destruction of the vehicle whether or not such damage or loss is caused by negligence or by any breach by me of the terms and conditions of hire mentioned hereinafter and printed overleaf. Subject to the provisions of Clause 7 as printed overleaf.

This paragraph as signed was different and it read as follows:

> I/We Mr. Karuppian Office Tel No. 7692241x223 (Business Reg. No. ... IC or PP No. 1343894/C of Blk 219 Jurong East ST 21 #08-605 SE 2260 Home Tel No. 5652822 hereby confirm having agreed to hire this day from Messrs. Vehito Rental Pte. Ltd. 594, Upper Thomson Road, Singapore 2057 the owner of the undermentioned vehicle at the rental fees as shown below and I further agree that I shall be held responsible for the first $1,000 subject to the provisions of Clause 7 as printed overleaf.

It would be observed that the original bargain envisaged under the blank form was that a hirer would be responsible for a sum fixed in respect of any loss or damage, howsoever caused and whether arising out of any breach of the contract. The agreement as signed made the bargain subject to the terms of Clause 7 which accordingly has to be reproduced below:

> 7. That the hirer (defendant) shall pay to the owner's (plaintiff's) cost of repair collision or upset damages to the Vehicle Provided, however, if the Vehicle is operated in accordance with all the terms and conditions of rental hereof, the hirer's (defendant's) liability for such damage shall not exceed $1,000
>
> Save as aforesaid the hirer (defendant) shall indemnify the owner (plaintiffs) against all loss suffered by the owner (plaintiffs) (including loss resulting from inability to use the Vehicle or let the same on hire) in consequence of the destruction loss or theft of or damage to the Vehicle prior to the Vehicle being returned to the owner (plaintiffs)." (The words within the brackets are added by me).

Clause 7 limited the liability of the defendant to the sum of $1,000 "if the Vehicle is operated in accordance with all the terms and conditions of rental hereof." One of the terms, as contained in Clause 4 of the agreement, provided that the hirer or the authorised driver "shall at all times drive the vehicle in a careful and skilful manner." It could be seen that far from being an insurer for any loss to the car, the defendant wanted to limit his loss to $1,000 so long as he or the authorised driver had been careful and skilful in driving the car. Counsel for plaintiffs relied on two authorities, namely *Vendair (London) Ltd. v. Giro Aviation*

Company Ltd. [1961] 1 Lloyd's Rep 283 and the almost contemporaneous Canadian case of *A.R. Williams Machinery Co. Ltd. v. Muttart Builders Supply (Winnipeg) Ltd.* 30 DLR (2b) 339. I hope I am forgiven for not setting out the cases in any further detail. I am not doing so because the judgments in these cases, which were delivered after trials were concluded in each case, are examples of the construction of the individual contract of hire of an Auster Aircraft in the first case and of the enlargement by contract, in the second case, of a hirer's obligations greater than that which the law would otherwise impose upon him. They do not directly bear on the interpretation of the terms of the agreement under consideration in this case except that they did serve as examples of particular constructions of two private documents. I was not persuaded by the construction of Clause 12 canvassed by Counsel for the plaintiffs. If I was wrong, however, I thought that the whole issue should be looked at and determined only at the end of a trial in which the factual matrix or background of the hire and the conclusion of the hire agreement including the age and condition of the car, *inter alia*, could be examined and findings of fact would be made.

For these reasons, my initial decision to dismiss the plaintiffs' appeal with costs remained unaltered, as I indicated to the parties at the conclusion of the further arguments.

Also found at [1989] 2 CLJ 318